


MADISON OFFICE

31 South Mills Street, Madison, Wisconsin 53715

www.legalaction.org | tel 608-256-3304 | toll-free 800-362-3904 | fax 608-256-0510

LEGALAction
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TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

FROM: Bob Andersen 

RE: SB 259, relating to homestead exemption and increases in the value of the exemption for various property that is exempt from execution.

DATE: September 23, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

I. Purpose of Statutory Exemptions

As, s. 815.18 of the statutes describes, these *exemptions* are intended to *"advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to maintain life and the opportunity to avoid becoming public charges."*

II. Homestead Exemption

The homestead exemption for consumers who were sued to recover on a debt was initially \$25,000 in 1973. That amount was increased 13 years later to \$40,000. It has been stuck at \$40,000 for the 22 years that have elapsed since 1986.

For an indication of how prices have changed since 1986, we have the following data from the year 1986, from the website <http://www.thepeoplehistory.com/1986.html>:

Average Cost of new house \$89,430.00
 Average Income per year \$22,400.00
 Average Monthly Rent \$385.00
 Average Price for new car \$9,255.00
 1 gallon of gas 89 cents

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If you have \$100 Converted from 1980 to 2005 it would be equivalent to \$243.45.

The proposal in the bill to index the homestead exemption every three years to an increase in the consumer price index is a good way to safeguard against the value of the exemption falling behind in time, as it has in the past.

III. All Judgements Automatically Result in Liens on Homesteads

Judgments against consumers result in the automatic establishment of liens against homes. The low exemption that exists now creates several problems for consumers:

- First, of course, a low exemption means that many more homes are subject to be taken away from consumers. Having a home is not only important to a consumer. It is one of the national and state policies to promote home ownership and the loss of homes due to debts runs counter to this policy. Therefore the policies are promoted by having a more realistic exemption.
- Secondly, consumers worry that if they get judgment for a medical debt or a consumer debt, there will be an execution on their home. Because of this fear they are often intimidated from defending themselves in actions for debts owed. They often settle and pay more than they should.
- Medical debts in particular are so complicated, especially when Medicare, Medicaid, and supplemental insurance is supposed to be paying for the costs, that it is easy for mistakes to be made either by the providers or by the consumers in paying too much.
- This is often seen with elderly individuals or disabled children who are left the homes by their parents.
- Because they are so afraid of losing their homes, consumers settle debts, sometimes inaccurately, by making payments in lieu of paying for the bare necessities for living, like food, clothing, and heat.
- An increase in the exemption means that the consumer's home will be better protected in bankruptcy, because the state's exemption can be used. Bankruptcies continue to rise in Wisconsin.
- With the economic crisis that is occurring now, protections for homesteads becomes even more important because of the rapidly growing number of workers being laid off and being faced with bills they cannot pay.

IV. Automobile Exemption

The auto exemption of \$1200 was created in 1990. It has not changed since.

In considering what the exemption should be today, automobiles are a little different than other items of property. That is because of the critical utility that an automobile has for the purpose of accessing employment. Since, it is in the interest of creditors for debtors to have access to automobiles to continue to work and earn incomes that can be used to pay for the debts, it is arguable that an exemption should be created to protect one automobile, no matter what value. However, since that would result in an exemption for luxury automobiles, it is difficult to defend. Consequently, the \$4,000 value proposed by the bill is a reasonable improvement.

V. Consumer Goods, Including Household Furnishing, Appliances, Clothes, Jewelry, Sporting Goods and Firearms.

The exemption for consumer goods was last increased in 1990 to \$5,000. Before that it had been \$400 for all wearing apparel, jewelry and other articles of personal adornment; \$200 for all beds, bedding, stoves, cooking utensils, and household furniture; and \$50 for firearms.

The increases in prices over the past twenty years justifies the increase in the exemption proposed by the bill to \$12,000.

VI. Depository Accounts under s. 815.18 (3)(k) of the Statutes

There was a \$1000 exemption for shares held as a member of a local building and loan association (which in subsequent years was referred to as a savings and loan association) that goes back to at least 1921 [see attached copy of the 1921 act provision]. It becomes more difficult to trace the legislation back before that point. According to the August 1990 edition of the Wisconsin Lawyer Magazine, in an article on a revision of the exemptions in 1990, this \$1000 exemption actually went back to 1905. Now, the statute in 1921 provided that this exemption would not apply to any person owning a homestead that was exempt. This is consistent with what was said by the magazine article to be the purpose of this \$1000 exemption – to enable people to save money to help pay for a home. This qualification that the \$1000 exemption would not apply where a person had a homestead exemption continued to be the law until 1990.

In 1935, this statute was amended to refer to shares held by a member of a federal savings and loan association, as well, with the same \$1000 exemption. [see attached copy of 1935 statute].

In 1947, the reference to a local building and loan association was changed to refer to a savings and loan association. [see attached copy of 1947 statute].

In 1990, the law was changed to refer to depository accounts. The same \$1000 exemption applied. The exception that this would not apply to any person owning a homestead that was

exempt was repealed. [see attached copy of 1989 act].

Based on this legislative history, it appears that an increase to \$5,000 would be appropriate.



STATE REPRESENTATIVE

GARY HEBL

46TH ASSEMBLY DISTRICT

TO: Members of the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing
FROM: Representative Gary Hebl
RE: SB 259, relating to the bankruptcy and insolvency property exemptions
DATE: September 23, 2009

This bill updates Wisconsin's bankruptcy and insolvency statutes so that the exemption amounts for various forms of personal and business property reflect the property's present-day value. These exemption amounts were last adjusted in the late 1980's, and were effective in 1990. This bill will modernize Wisconsin's bankruptcy and insolvency law by bringing the allowable exemptions in line with inflation since 1990.

In general, bankruptcy and insolvency property exemptions, such as those addressed in this bill, allow debtors to retain the basic necessities of life so that their debt does not leave them so destitute that they become wards of the state. This bill allows an individual to retain the basic business equipment, personal property and mode of transportation necessary to start over after a bankruptcy.

These exemptions will help people who have a great deal of equity in their home and other property, mostly older individuals who have incurred an expected medical expense or other unforeseen loss of revenue, such as unemployment. These exemptions do not, by any means, allow individuals to spend recklessly and avoid the consequences.

This bill also eliminates what is known as the "marriage penalty" for the exemption provided for homesteads. Currently, homesteads are the only property exemption that cannot be claimed individually by each spouse. This creates a marriage penalty because other non-married couples who jointly own a home can both claim the exemption. This bill also adjusts the homestead exemption to the Consumer Price Index every three years.

With the high unemployment and tightened credit markets we are now experiencing, bankruptcy filings are already hitting new highs and could possibly get worse. Now is the time to prepare our state for the coming wave of bankruptcies so that Wisconsin has the tools to emerge successfully from this recession and its aftershocks.

Bankruptcy, Insolvency & Creditors Rights Section



State Bar of Wisconsin

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To: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing
From: State Bar of Wisconsin and the Bankruptcy, Insolvency & Creditors Rights Law Section
Date: September 23, 2009
Re: Support of Senate Bill 259

The State Bar of Wisconsin and the Bankruptcy, Insolvency & Creditors Rights Law Section within the State Bar support a variety of revisions to Wisconsin's exemptions statutes. We especially appreciate Representative Hebl and Senator Taylor's proposal that would make a number of increases in various property exemptions as well as eliminating the marriage penalty associated with the homestead exemption.

Exempt property is property that individuals can keep from execution (seizure) by judgment creditors or a bankruptcy trustee. Debtors are not allowed to exempt property from mortgages, voluntary security interests or statutory or tax liens, only the Debtor's equity in property is considered when applying the exemption.

Non-homestead exemptions were last revised in the late 1980s, at which time it was anticipated that the amount would be revisited to keep pace with inflation. That has not taken place.

The property exemptions changed under this legislation and the proposed amendment includes:

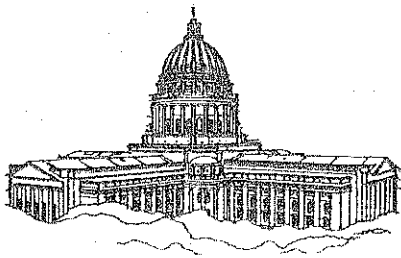
- Increase the homestead exemption from \$40,000 to \$75,000;
- Increase the business/farm property exemption from \$7,500 to \$15,000 and add a provision to exempt debtor's interest in a closely held business entity;
- Increase the consumer goods exemption from an aggregate of \$5,000 to an aggregate of \$12,000;
- Increase the motor vehicle exemption from \$1,200 to \$4,000;
- Increase the personal injury award exemption from \$25,000 to \$50,000 and clarify that it is per claim; and
- Increase the depository account exemption from \$1,000 to \$5,000.

All of the Wisconsin exemptions, but for the homestead exemption, can be doubled for a married couple. The homestead exemption cannot be doubled for a married couple, which creates a "marriage penalty". This penalty has lead to couples divorcing to be able to keep their home from a judgment creditor. SB 259 would eliminate the "marriage penalty" by allowing married couples to stack their homestead exemption.

For additional information contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800)728-7788 ♦ (608)257-3838 ♦ Fax (608)257-5502
Internet: www.wisbar.org ♦ Email: service@wisbar.org



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Testimony of Senator Lena C. Taylor
Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing
Senate Bill 259 – Homestead & Various Exemptions
Wednesday, September 23, 2009

Honorable members of the committee,

Thank you for allowing me time to testify today on Senate Bill 259 which increases the homestead exemption and various other items of exemption that cannot be included in execution. This bill and its Assembly companion, AB 387, are authored by Rep. Gary Hebl and myself, with the support of many interested organizations including the State Bar of Wisconsin, Legal Aid of Wisconsin, and the Wisconsin Realtor's Association.

Under current law there are property items and values of certain property are exempt from execution on a lien or in bankruptcy actions. SB 259 raises the value of these certain property items. The exemption for business equipment, inventory, farm products and professional books is raised from \$7500 to \$15,000. The exemption for consumer goods, including household furnishing, appliances, clothes, jewelry, sporting goods, and firearms is raised from \$5,000 \$12,000. The motor vehicle exemption goes from \$1200 to \$4000, and payments for personal injury increases from \$25,000 to \$50,000.

In addition the Senate Bill calls for indexing of the homestead exemption by the Department of Administration every three years. The Assembly version removes this indexing feature, however, while I remain open to discussing the indexing feature, I urge committee members to seriously considering leaving the indexing feature in the bill as an appropriate tool to ensure that homeowners need not wait on the Legislature to act to be assured they can keep some value of their asset.

Senate Amendment 1 to the SB 259, which I have introduced, raises the homestead exemption to \$75,000. This would parallel action taken by the Senate in passing Senate Bill 160 just a few short weeks ago. The amendment also raises the depository account exemption to \$5,000 from \$1,000. It is my understanding that this exemption has not been changed since near the beginning of the last century.

Together SB 259 and Senate Amendment 1 represent a stride forward in protecting the assets of families that struggling through this perilous economy just as you and I. I encourage your support of this legislation.

Thank you.

State Capitol, PO Box 7882
Madison, WI 53707-7882
Phone: (414) 342-7176
Capitol: (608) 266-5810

Fax: (608) 267-2353
Toll-free: 1-888-326-6673
Sen.Taylor@legis.wisconsin.gov
www.SenatorTaylor.com

Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing (Chair)
Committee on Justice Reinvestment
Initiative Oversight (Chair)

Joint Committee on Finance
Joint Committee for Review of Criminal Penalties (Co-Chair)
Committee on Strengthening Wisconsin Families (Co-Chair)
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